80-1795

Supreme Court, U.S.
FILED
APR 28 1981
ALEXANDER L. STEVAS,
CLERK

No.

IN THE

Supreme Court of the United States

October Term, 1980

IN THE MATTER OF 18.86 ACRES OF REAL PROPERTY, NOW KNOWN AS LOT 35, BLOCK 57, SECTION 19, LOCATED IN PITTSGROVE TOWNSHIP, SALEM COUNTY, AND FORMERLY OWNED BY CHARLES NEWELL ATKINSON, LEGATEE BY WILL OF PHEBE ATKINSON, DECEASED 1918

On Appeal From the Supreme Court of New Jersey

JURISDICTIONAL STATEMENT

C. NEWELL ATKINSON
711 Broad Street
Northfield, N. J. 08225
Tel. (609) 645-2802
Appellant pro se

International Printing Co., 711 So. 50th St., Phila., Pa. 19143 — Tel. (215) 727-8711

QUESTIONS PRESENTED

(1) Whether Pittsgrove Township can deny appellant the right to due process when the New Jersey Supreme Court has held in *Township of Montville v. Block 69, Lot 10* that the notice provisions of the In Rem Tax Foreclosure Act are unconstitutional and a violation of due process, and since appellant cannot be deprived of property without due process of law under Article XIV Sec. 1 Amendments to the U. S. Constitution? The prospective only clause does not effect the logic and reasoning in determination of the unconstitutionality of the notice provisions.

(2) Whether the State of New Jersey can continue to enforce through the courts and maintain on its Statute Books the unconstitutional provisions of the In Rem Tax Foreclosure Act (1948) and Exempt Property which Ceases to be Exempt (1949) in violation of Article XIV Sec. 1 Amendments to the U. S. Constitution?

(3) Whether Pittsgrove Township, Salem County, N. J., can deny appellant the right to have a fraudulent tax foreclosure judgment declared null and void by invoking the res judicata doctrine? Rules governing the Courts of New Jersey Rule 4:50-1(c) fraud (d) the judgment is void.

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No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

IN THE MATTER OF 18.86 ACRES OF REAL PROPERTY, NOW KNOWN AS LOT 35, BLOCK 57, SECTION 19, LOCATED IN PITTSGROVE TOWNSHIP, SALEM COUNTY, AND FORMERLY OWNED BY CHARLES NEWELL ATKINSON, LEGATEE BY WILL OF PHEBE ATKINSON, DECEASED 1918

ON APPEAL FROM THE SUPREME COURT OF NEW JERSEY

OPINIONS BELOW

The letter-order of the N. J. Superior Court, Salem County Law Division, necessarily relevant because it was made a part of the Chancery judge's letter-order (Appendix A1). The letter-order of the N. J. Superior Court, Salem County Chancery Division (Appendix A9).

JURISDICTION

This action was filed in the N. J. Superior Court, Salem County Chancery Division, an action in equity. Appellate court affirmance by judgment; (Appendix A10). State Supreme Court denied certification on Feb. 11, 1981, and notice of appeal was filed within 90 days of that date. This Court's jurisdiction is invoked under 28 U. S. C. Sec. 1257 Ch. 81.

STATEMENT OF THE CASE

This is an action filed in the New Jersey Superior Court, Salem County Chancery Division, to declare a tax foreclosure judgment entered against appellant on August 16, 1962, without any previous notice of assessment, taxes due, or foreclosure proceeding while he was a resident of Washington, D. C., as null and void. Appellant was a resident of Washington, D. C. and suburbs from 1921 to 1971, and a taxpayer in both Maryland and D. C. from 1939 to 1971.

The tax foreclosure concerned 18.86 acres of woodland located in Pittsgrove Township, Salem County, State of New Jersey and was tax-exempt prior to inheritance. The will proviso carried no designation as to Lot, Block or Section and since land tax maps were unavailable in this New Jersey region until approximately 1950 it is assumed Lot, Block and Section were adopted by the Township when the maps were made. Each tax collector from time of inheritance until the property was placed on the tax rolls pursuant to the enactments of NJSA 54: 4-63.26 EXEMPT PROPERTY WHICH CEASES TO BE EXEMPT (1949) and NJSA 54: 5-104.29 IN REM TAX FORECLOSURE ACT (1948) was notified of appellant's ownership and in writing requested notification of the assessment of taxes. Constant vigil was made from 1918 to 1943 and then on advice of Chief Judge D. Lawrence Groner of the U. S. Court of Appeals where appellant was employed, he was assured notification of any tax assessment would be forthcoming. Judge Groner had written the opinion in *Tumulty v. D. C.*, 69 App. D. C. 390 (1939) a case concerning the validity of assessment.

In June 1972 appellant employed a title abstracter in Bridgeton, a former Title Examiner for Chelsea Title & Guaranty Co., who after a seven month delay provided appellant with information that a foreclosure proceeding

had transpired, and the property sold by Pittsgrove Township to the H. D. Martin Co. of Millville, New Jersey.

From the Records Office in Trenton appellant learned that the H. D. Martin Company was incorporated by Nathaniel Rogovoy, Esq., of Millville on Nov. 16, 1962 purportedly in the name of his secretary Helen D. Martin and he purchased the property the following day Nov. 17, 1962. He had title to the property insured by Chelsea Title and Guaranty Co.

Appellant met with the Township Committee, the Salem County Tax Board and officials involved and could elicit no information. The Township Clerk who was also the tax assessor refused access to the Township minutes and would answer no written or oral request. Local attorneys consulted for representation in Court refused to prosecute.

From the tax duplicate appellant learned the tax assessor left the address blank although he had an address and knew appellant was a District of Columbia resident.

The writer of the foreclosure complaint, although listing the land as assessed to Charles N. Atkinson (only a paper record in Township files) inserted therein "owner unknown". According to Court Rule 4: 64-7 IN REM TAX FORECLOSURE this complaint was verified by Everett M. Hitchner the tax collector, a lifetime resident of Palatine, N. J. where appellant was reared, and Hitchner was also a distant relative through marriage.

Unable to obtain legal representation appellant filed a tort action pro se in the Superior Court, Salem County Law Division, and requested a jury trial. The charges fraud, conspiracy, dereliction of duty and malfeasance in office, humiliation in being listed a tax delinquent, and sought a money judgment for loss of land.

The case was scheduled to be heard on the jury calendar on April 15, 1974. (Appendix A6). Immediately

subpoenas were served by the Salem County Sheriff on Jacob Helig, Mayor; Arthur Schalick, tax assessor and Everett M. Hitchner, tax collector. (Appendix A7). Then George Friedman, Township Solicitor conferred with Judge Joseph Narrow and in order to remove the case from the jury calendar scheduled a pre-trial conference for March 29, 1974. (Appendix A8). The pre-trial was a farce, accomplished nothing but it gave the Solicitor the opportunity he was seeking to make an oral motion for summary judgment. Its later filing in writing, refutation by counsel employed solely for the argument, was granted. The Judge's letter-order did not mention the argument on the motion or any of the issues presented, such as NJSA 2A: 14-7 twenty year statute of limitations in realty actions.

Since this action seeks to have the foreclosure judgment declared null and void it is necessary to state that Judge Frank J. Kingfield who entered the judgment was a north Jersey judge, sitting in Trenton. What did this north Jersey judge (from the Phillipsburg area) know about landowners and taxpayers in Salem County? Absolutely nothing. Appellant made an attempt to learn from the Administrative Office files Judge Kingfield's authority to sit as Salem County Chancery judge. The Director of the Administrative Office informed appellant that Judge Kingfield in 1962 was assigned to Chancery Division in Hunterdon, Mercer, Somerset and Middlesex Counties, all in north Jersey. (Appendix A13). He signed the judgment in August at a time when the Courts hear only Criminal cases during the summer months.

Appellant also learned after the tort action had been dismissed that Orvyl Schalick, a brother of the tax assessor, was Township Solicitor at the time appellant's land was first assessed. He was the legal authority for the procedure that followed, no notice to the landowner of a first assessment, no notice that there were taxes owed, and that

the address would be left blank on the tax duplicate. In 1957 before the foreclosure proceeding Orvyl Schalick was appointed a N. J. Superior Court judge. Orvyl Schalick's first wife was a cousin of appellant, he had dinner in the Schalick home in Salem on vacation from Washington, D. C., and Schalick as a practicing attorney in representing a client contacted appellant in the Washington suburbs. Therefore this foreclosure without notice to appellant was a flagrant swindle by Township officials, and the Courts in New Jersey have dismissed every attempt at justice because of the parties involved.

In the light of the facts stated, how could Judge Joseph Narrow deny appellant's right to a trial by jury after the case had been calendared and subpoenas served at appellant's expense by the Salem County Sheriff? How could Judge Narrow dismiss the tort action citing NJSA 2A:14-1 a six-year statute of limitation when the cause of action accrued on Jan. 20, 1973 when appellant was apprised of the tax foreclosure and the loss of land? The Certificate of Sale executed by the tax collector and notarized by the tax assessor provides, in small print—"In case no notice is given, and there shall be no redemption within twenty years after the purchaser has entered into open possession, since continued, under the sale; then in either case the right of redemption shall be barred."

Further appellant has a right to know if the law NJS 54: 4-63.20 EXEMPT PROPERTY WHICH CEASES TO BE EXEMPT was violated by Township officials by ignoring the following provisions?

NJSA 54: 4-64 DELIVERY OF TAX BILLS; especially to a non-resident who had requested notice in writing

NJSA 54: 4-91.1 COLLECTOR'S LIST OF DELINQUENT TAXES BELIEVED NOT COLLECTIBLE

NJSA 54: 4-91.2 RELEASE OF COLLECTOR BY RESOLUTION (No Resolution can be located)

NJSA 54: 4-95 LIST OF DELINQUENTS TO BE PUBLISHED ANNUALLY

NJSA 54: 4-122.7 QUARTERLY LIST OF DELINQUENTS TO BE POSTED IN 10 CONSPICUOUS PLACES IN THE MUNICIPALITY

Judge Narrow held (quoting the language of EXEMPT PROPERTY WHICH CEASES TO BE EXEMPT (1949) NJSA 54: 4-64 "The validity of any tax or assessment, or the time at which it shall be payable, shall not be affected by the failure of a taxpayer to receive a tax bill but every taxpayer is put upon notice to ascertain from the proper official . . . the amount which may be due for taxes." This provision did not apply to appellant for he was not then, nor had he ever been a New Jersey taxpayer.

Judge Narrow also cited sections of the In Rem Tax Foreclosure Act which were not directly attacked in the tort action, only collaterally as incidental to the foreclosure. Any statute which ignores the landowner, provides suit shall be against the land only, no personal judgment, and notice "may" be given is a totalitarian and unconstitutional law no matter what the courts may decide.

How could Judge Philip Gruccio, Salem County Chancery Division, declare that the issues in the tort action, Law Division, and the issues to declare the foreclosure judgment as null and void were of sufficient duplicacy to invoke a ruling of res judicata, and proceed in effect to hold NJSA 2A: 14-1 barred action, in the light of *Hyland v. Kirkman et al.* (Chelsea Title & Guaranty Co.) a suit to rectify a massive fraud upon the court and set aside certain judgments, which held that where fraud is alleged the limitation of the action to correct the fraud does not begin to run until the fraud is discovered.

Finally why have the New Jersey courts consistently refused to compel Pittsgrove Township officials to submit

one word of evidence in the matter? Especially when Pittsgrove Township officials, with knowledge of appellant's ownership and non-residence since 1918 and 1921 respectively, did nothing until 1950, a period of 32 years, thereby lulling appellant into a false sense of security, then with the enactment of two pieces of legislation sponsored by the N. J. League of Municipalities and the N. J. Association of Municipal Attorneys lowered the boom.

THE QUESTIONS ARE SUBSTANTIAL

This appeal involves questions of substance to every landowner in the State of New Jersey, particularly non-residents; and in a collateral sense these cases pursued over a six year period are indicative of what New Jerseyians may expect in a lack of consideration and inhumane treatment by Township officials, who are paid by the taxpayers, without being required to account for their actions. Comparable facts to this case will not be found on the library shelves, and the citation of pertinent law has been totally ignored by the New Jersey judges. What greater question can be presented to this Court then a plea for equal protection of the law under the U. S. Constitution, the supreme law of the land, and the right to due process when property is seized without notice; and whether the State of New Jersey can enact laws to defeat these rights.

CONCLUSION

For the reasons stated above, this Court should note probable jurisdiction of this appeal.

Respectfully submitted,

CHARLES NEWELL ATKINSON,
Appellant pro se.

Appendix.

SALEM COUNTY COURT

NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE COMMITTEE ON OPINIONS.

JOSEPH NARROW
JUDGE

SALEM, NEW JERSEY
May 29, 1974

George S. Friedman, Esquire
Solicitor, County of Salem
77 Market Street
Salem, New Jersey, 08079

Lawrence W. Point, Esquire
181 East Avenue
Woodstown, New Jersey, 08098

Mr. Charles Newell Atkinson
Vassar Square Arms Apartments
Apartment 1710
Ventor, New Jersey, 08406

Re: Atkinson vs. Helig, et als.
Docket No. L-4494-73
Case No. 1754

Gentlemen:

This matter is before me on the Motion for Summary Judgment by defendants.

The plaintiff's complaint is a lengthy recitation of what would be regarded as a statement of facts, principals of law, and argument thereon, rather than a pleading in the true sense of the word. In consequence, it is difficult

to ascertain the basis for the relief sought by plaintiff, the relief being for an assessment of damages against each of the defendants. However, it would appear that plaintiff seeks damages against the municipality and against the individual defendants as officers of the municipality for alleged fraud in not making personal service on the defendant of the summons and complaint in an in rem foreclosure action and in failing to disclose information with respect to plaintiff's residence and whereabouts so that notice could be given to him of said suit.

It appears that plaintiff became the owner of a parcel of real property in the Township of Pittsgrove in 1918 by inheritance from his father who had obtained a deed for said property many years before. The complaint alleges that plaintiff wrote to a Mr. Garton in 1938, he being the Tax Collector at that time, about his property; Garton's term of office as Tax Collector expired in 1942. Plaintiff's complaint further alleges that since he had not received any reply to his letter from Mr. Garton, he assumed that no taxes were owing. The complaint further alleges that in 1943 plaintiff wrote to Arthur Schalick, one of the defendants, thinking that he was the Tax Collector. Actually, Mr. Schalick was the Tax Assessor and not the Tax Collector. Plaintiff claims that in this letter he asked to be notified of any taxes.

On November 15, 1958, a Tax Certificate of Sale was issued to Pittsgrove Township, and, on August 20, 1962, judgment was entered in an in rem tax foreclosure action barring plaintiff's right of redemption. The complaint further alleges that on January 20, 1973, plaintiff first learned of the above proceedings which deprives him of the ownership of his property.

He contends that some or all of the municipal officials knew or should have known where he resided and should have advised him with respect to his land being assessed

for taxes and with respect to the institution of the in rem foreclosure and further contends that some or all of the defendants intended to defraud him by failing to disclose his whereabouts, by making false affidavits with respect to his whereabouts so that he didn't receive notice, and he also charges some or all of the defendants with negligence in the performance of their official duties in connection with advising him of the assessment of taxes on his land, seeing to it that he received tax bills, seeing to it that he received notice of the tax sale and the following in rem foreclosure action.

In this Motion for Summary Judgment, defendants' rely on the Statute of Limitations, contending that the complaint, on its face, inarticulate as it is, discloses that more than six years have elapsed since the entry of the judgment in the in rem tax foreclosure and that consequently plaintiff's action is barred by the Statute of Limitations.

Plaintiff contends that he did not learn of the foregoing proceedings until January 20, 1973, and that since his action is founded in fraud, that the Statute of Limitations does not commence to run against him until he learned of his loss.

However, N. J. S. 54:5-104 42 provides that: "The copy of the complaint filed in the Office of the County Recording Officer and the publication and posting of the notice as provided by the rules of the Supreme Court shall be notice to the world, including any persons claiming any right, title, interest in or lien upon the lands sought to be affected by said complaint, whether or not the names of said persons appear in said complaint, ° ° ° "

And N. J. S. 54: 4-64 places the responsibility upon the property owner to ascertain the taxes that may be due and owing upon his property and provides, among other things, in so far as pertinent here, "the validity of any tax

or assessment, or the time at which it shall be payable, shall not be affected by the failure of a taxpayer to receive a tax bill, but every taxpayer is put upon notice to ascertain from the proper official of the taxing district the amount which may be due for taxes or assessments against him or his property."

Note also the case of Borough of East Rutherford v. Sisselman, 26 Super 133 (1953), wherein it was held that a property owner who is charged with notice of legislation relating to taxation of real property, cannot complain if his name does not appear in an in rem tax foreclosure proceeding.

Since the statute, N. J. S. 54:5-104.42 provides that the copy of the complaint filed in the Office of the County Recording Officer and the publication and posting of the notice is notice to the world, including all persons, it becomes obvious that plaintiff's contention that he did not know about the alleged fraud cannot benefit him in so far as the running of the Statute of Limitations is concerned.

Obviously then, N. J. S. 2A:14-1, which provides for commencing an action within six years after the cause of action accrues for trespass to real property or for any tortious injury to real or personal property, is a bar to the plaintiff's action.

Additionally, as stated heretofore, while the complaint attempts to charge the defendants with negligence in the performance of their duties or even with fraudulent conduct in the performance of their duties, it does not set forth what such duties were.

I gather from the argument made that it is contended that defendant, or certain ones of the defendants, did not set forth whatever knowledge they had respecting plaintiff's whereabouts in the affidavit of inquiry which plaintiff contends was filed or should have been filed in connection with the in rem foreclosure proceeding. However, as

stated heretofore, in 1962 when these foreclosure proceedings were being conducted, there was no requirement either by statute or by rule of court for an affidavit of inquiry with respect to the whereabouts of the owners of lands which were being foreclosed. There being no such duty, there could not be a violation thereof.

Accordingly, the motion of the defendants for summary judgment is granted.

Yours very truly,

JOSEPH NARROW
Joseph Narrow, J.C.C.

dcm

TRIAL CALENDAR
JUDGE JOSEPH NARROW
SALEM COUNTY

JURY TRIALS

The following civil cases are being listed for trial on April 15, 1974, at 9:00 A. M. This list will serve as your trial notice.

	April 15, 1974		*Date Complaint Filed*
S-1622	Shaffer v. Coleman	Brown, Connery, Kulp Wille, Purnell & Greene Halpin, Bailey & Pancari	8-15-72
S-1699	Dennis v. Chandler	Charles Casella Shapiro, Brotman, Eisenstat & Capizola	5-2-73
S-1754	Atkinson v. Helig et als	Charles Newell Atkinson Friedman and Bowen	10-23-73

(THIS CALENDAR LISTED 13 OTHER CASES)

OFFICE OF SHERIFF

NORRIS B. WILLIAMS
SHERIFF

94 Market Street
Salem, New Jersey 08079
March 21, 1974

C. Newell Atkinson
Vassar Sq. Arms—Apt. 1710
4800 Boardwalk
Ventnor, New Jersey 08406

Re: Atkinson vs. Helig, et als
Docket No. L-4494-73

Dear Mr. Atkinson:

Enclosed herewith please find copies of Subpoenas with Sheriff's Return attached thereto in the above captioned matter.

You will note that a $2.00 attendance fee was paid to each defendant, which I took from my Petty Cash Fund. I would therefore appreciate it if you would make payment to this office by two checks—one for the costs in the amount of $26.25 and the other for the attendance fees in the amount of $6.00. This would simplify my bookkeeping tremendously.

Also enclosed herewith is my bill for services.

Very truly yours,
(Mrs.) Patricia Smith, Secretary

ps
Encls.

NEW JERSEY SUPERIOR COURT
CASE No. 1754 (L-4494-73)

Charles Newell Atkinson vs. Jacob N. Helig et als has been set down for pretrial conference before Honorable Joseph Narrow at the Court House, Salem, New Jersey on March 29, 1974 at 11.30 A.M.

At the hearing will you please be prepared to submit the memorandum statement required under Rule 4:29-3 and to meet the provisions of Rule 4:29-1.

The Assignment Judge will consider application for SPECIAL PRETRIAL HEARING in complicated or involved cases.

By order of the Court.

cc: Friedman and Bowen, Esqs.

THOMAS J. GRIEVES
County Clerk

NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE COMMITTEE ON OPINIONS

SUPERIOR COURT OF NEW JERSEY

PHILIP A. GRUCCIO
JUDGE

Atlantic City, N. J.
08401

May 7, 1979

George S. Friedman, Esquire
77 Market Street
Salem, New Jersey

Mr. Charles N. Atkinson
711 Broad Street
Northfield, New Jersey

Re: IN THE MATTER of 18.86 acres of real property known as Lot 34, Block 57, etc. F-3225-61

Gentlemen:

An Order to Show Cause was signed in this matter on October 23, 1978 returnable November 22, 1978. The verified Complaint seeks to declare null and void an In Rem Tax Foreclosure Judgment entered in the case of *Pittsgrove Township v. Charles N. Atkinson*, F-3225-61. A Motion to dismiss the Complaint was made by defendant, Pittsgrove Township, returnable on November 15, 1978. Defendant Township seeks dismissal on the basis of the doctrine of *res judicata*.

The Complaint in this matter asserts several grounds for vacating the Judgment. Count one of the Complaint asserts fraud on the part of the tax collector and tax assessor. These same allegations were made by plaintiff in the case of *Atkinson v. Helig*, et al., L-4494-73. A Motion for Summary Judgment was granted in that case and affirmed by the Appellate Division. Count two of the

Complaint argues Civil War exemption of *N. J. S. A.* 54:4-63.26 applied. This argument was also made and rejected in *Atkinson v. Helig.* Various other allegations of fraud are made in the Complaint as a basis for declaring the foreclosure void. These allegations were all contained in the Complaint filed in the *Atkinson v. Helig* case. This is not really disputed by plainitff Atkinson. Rather he contends that Judge Narrow erred in that case in granting defendant's Motion for Summary Judgment on the basis of the Statute of Limitations. As stated earlier, the Appellate Division affirmed Judge Narrow's ruling. Plaintiff Atkinson took no further appeal. He cannot now appeal that decision in this or any Court.

Plaintiff also argues that the Judgment should be vacated because the notice provisions of the *In Rem Tax Foreclosure Act* were declared unconstitutional in Township of *Montville v. Block 69, Lot 10,* 74 N. J. 1 (1977). The Court in that case specifically limited its holding to a prospective application only. There is thus no merit to plaintiff's argument.

The motion to dismiss is granted on the basis of the doctrine of *res judicata. Continental Can Co. v. Hudson Foam,* 123 N. J. Super. 364 (Law Div. 1973); *Borough of Saddle River v. Bobinski,* 108 *N. J. Super.* (Ch. Div. 1969).

Very truly yours,

PHILIP A. GRUCCIO, J.S.C.

NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE COMMITTEE ON OPINIONS

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-4267-78

IN THE MATTER OF 18.86 ACRES OF REAL PROPERTY, NOW KNOWN AS LOT 35, BLOCK 57, SECTION 19, LOCATED IN PITTSGROVE TOWNSHIP, SALEM COUNTY, AND FORMERLY OWNED BY CHARLES NEWELL ATKINSON, LEGATEE BY WILL OF PHEBE ATKINSON, DECEASED 1918.

Argued November 18, 1980 Decided Dec. 2, 1980

Before Judges Michels and Ard.

On appeal from the Superior Court of New Jersey, Chancery Division, Salem County.

Charles N. Atkinson, appellant, argued the cause *pro se.*

Duane R. Bell argued the cause for respondent Township of Pittsgrove (George S. Friedman, on the brief).

PER CURIAM.

The judgment of the Chancery Division dismissing the complaint of appellant Charles N. Atkinson on the ground that the action is barred by principles of *res judicata* is affirmed substantially for the reasons set forth by Judge Gruccio in his letter opinion of May 7, 1979.

Affirmed.

A TRUE COPY
Elizabeth McLaughlin
Clerk

SUPREME COURT OF NEW JERSEY
C-318 SEPTEMBER TERM 1980

IN THE MATTER OF 18.86 ACRES OF REAL PROPERTY, NOW KNOWN AS LOT 35, BLOCK 57, SECTION 19, LOCATED IN PITTSGROVE TOWNSHIP, SALEM COUNTY, AND FORMERLY OWNED BY CHARLES NEWELL ATKINSON, LEGATEE BY WILL OF PHEBE ATKINSON, DECEASED 1918

(Charles Newell Atkinson)
pro se—petitioner.

ON PETITION FOR CERTIFICATION

To the Appellate Division, Superior Court:

A petition for certification of the judgment in A-4267-78 having been submitted to this Court, and the Court having considered the same;

It is ORDERED that the petition for certification is denied with costs.

WITNESS, the Honorable Robert N. Wilentz, Chief Justice, at Trenton, this 10 day of February, 1981.

STEPHEN TOWNSEND, Clerk

FILED
Supreme Court
Feb 11 1981
Stephen W. Townsend
Clerk

A TRUE COPY
Stephen W. Townsend
Clerk

711 Broad Street
Northfield, N. J.
Nov. 21, 1980

Mr. Robert D. Lipscher
Director, Administrative Office of N. J. Courts
CN 037
Trenton, N. J.

Dear Mr. Lipscher:

I would like to know from your records, the following:

(1) The assignment Judge for Salem Co. courts during 1973-1974. —JUDGE HERBERT HORN

(2) The assignment Judge for Salem Co. courts during 1961-1962. —JUDGE ANTHONY J. CAFIERO

(3) One of the specifics if possible is to learn why and how Judge Frank Kingfield (retired since 1973) a north Jersey Judge was assigned to sit in Salem County Chancery Division in 1962. *(See Below)

Awaiting your reply, I am

Yours very truly,
C. NEWELL ATKINSON

*JUDGE KINGFIELD WAS ASSIGNED TO CHANCERY IN 1962 IN HUNTERDON, MERCER, MIDDLESEX AND SOMERSET COUNTIES, SITTING IN TRENTON.

Received Nov 24, 1980
Administrative Office of the Courts

SERVICE WHERE CONSTITUTIONALITY OF STATE STATUTES ARE IN ISSUE

Rule 28 provides that when the constitutionality of any State statute is questioned the initial pleading shall recite that 28 U. S. C. Sec. 2403(b) may be applicable and notice shall be served upon the Attorney General of the State.

Hon. James R. Zazzali, Attorney General of the State of New Jersey in Trenton was notified by letter mailed April 20, 1981 of this appeal to the U. S. Supreme Court, Rule 28 and the statutes in question.

C. Newell Atkinson, Appellant

SUPREME COURT OF NEW JERSEY
C-318 SEPTEMBER TERM 1980

IN THE MATTER OF 18.86 ACRES OF REAL PROPERTY, NOW KNOWN AS LOT 35, BLOCK 57, SECTION 19, LOCATED IN PITTSGROVE TOWNSHIP, SALEM COUNTY, AND FORMERLY OWNED BY CHARLES NEWELL ATKINSON, LEGATEE BY WILL OF PHEBE ATKINSON, DECEASED 1918

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Charles Newell Atkinson hereby appeals the above entitled case to the Supreme Court of the United States from the final judgment of the Supreme Court of New Jersey, denying petition for certification on Feb. 11, 1981.

This appeal is taken pursuant to 28 U. S. C. Sec. 1257. Ch. 81.

CHARLES NEWELL ATKINSON
Appellant pro se.

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

No. ——

IN THE MATTER OF 18.86 ACRES OF REAL PROPERTY, NOW KNOWN AS LOT 35, BLOCK 57, SECTION 19, LOCATED IN PITTSGROVE TOWNSHIP, SALEM COUNTY, AND FORMERLY OWNED BY CHARLES NEWELL ATKINSON, LEGATEE BY WILL OF PHEBE ATKINSON, DECEASED 1918

CERTIFICATE OF SERVICE

Charles Newell Atkinson, Appellant pro se, hereby certifies that on April 15, 1981 a copy of the foregoing Notice of Appeal was mailed first-class postage prepaid to Duane R. Bell, Equire, Pittsgrove Township Solicitor, 77 Market Street, Salem, N. J. and two copies mailed to the Clerk of the New Jersey Supreme Court, Trenton, N. J.

/s/ CHARLES NEWELL ATKINSON

Sworn before me this 14th of April 1981

Joyce A. Gawle

JOYCE A. GAWLE
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires Aug. 30, 1984

Office-Supreme Court, U.S.
FILED
JUL 9 1981
ALEXANDER L. STEVAS,
CLERK

NO. 80-1795

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

IN THE MATTER OF 18.86 ACRES OF REAL PROPERTY, NOW KNOWN AS LOT 35, BLOCK 57, SECTION 19, LOCATED IN PITTSGROVE TOWNSHIP, SALEM COUNTY, AND FORMERLY OWNED BY CHARLES NEWELL ATKINSON LEGATEE BY WILL OF PHEBE ATKINSON, DECEASED 1918.

APPEAL FROM THE SUPREME COURT OF NEW JERSEY

MOTION TO DISMISS

KENNETH W. MILLER, JR.
Miller & Bell
77 Market Street
Salem, New Jersey 08079
(609) 935-0912
Attorney for Appellee

QUESTIONS PRESENTED

1. Whether a New Jersey State Court's decision that an action is barred by the Statute of Limitations presents a substantial Federal Question.

2. Whether the decision of the New Jersey Courts that an action is barred by the doctrine of res judicata rests on an adequate non-federal basis.

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APPEAL FROM THE SUPREME COURT OF THE

STATE OF NEW JERSEY

MOTION TO DISMISS

Appellee, pursuant to Rule 16 (1) (b) of the Rules of the Supreme Court of the United States, moves the court to dismiss the appeal herein on the following grounds:

1. The appeal does not present a substantial federal question.
2. The judgment of the Supreme Court of the State of New Jersey rests on an adequate non-federal basis.

STATEMENT

On October 23, 1978, Appellant herein filed a Complaint and Order to Show Cause in the Superior Court of New Jersey, Chancery Division, seeking to have the judgement rendered in a 1962 In Rem Tax Foreclosure declared null and void.

The trial judge in the Chancery Division held that the action was barred by the doctrine of res judicata.

This decision was based on the fact that Appellant had filed a prior action in the Law Division of the Superior Court of New Jersey on October 16, 1973 based on the exact same facts and seeking essentially the same relief. The trial judge in the Law Division held that the action was barred by the Statute of Limitations. Thereafter, on June 27, 1975 the Judgment entered in the Law Division was affirmed by the Appellate Division of the Superior Court of New Jersey. No further appeals were pursued in the State Courts.

On July 27, 1979, Appellant herein filed a timely Notice of Appeal of the Chancery Division's Decision with the Appellate Division of the Superior Court of New Jersey. The Appellate Division in a per curiam decision on December 2, 1980, upheld the judgment of the Chancery Division substantially on the doctrine of res judicata.

Appellant herein then filed a timely petition for certification with the Supreme Court of New Jersey on February 11, 1981, which petition for certification was denied by the New Jersey Supreme Court.

The Appellant then filed a timely appeal to the Supreme Court of the United States, jurisdiction of which is invoked under 28 U.S.C. § 1257.

ARGUMENT

Appellant's original action filed in the Superior Court, Law Division in 1975 was dismissed on the basis of the running of the Statute of Limitations. As the dismissal of the action on this basis was upheld by the Appellate Division of the Superior Court of New Jersey and no further Appeals were taken by Appellant, the case was as effectively disposed of on the merits under New Jersey law as if the action had been tried to a conclusion.

The later decisions of the Chancery Division of the New Jersey Superior Court in dismissing the action on the basis of res judicata and of the Appellate Division in upholding that decision, and of the New Jersey Supreme Court in refusing to review the lower court's decisions were all founded on the original decision that the action was barred by the applicable New Jersey Statute of Limitations.

Certainly, it is patently obvious that a decision that an action is barred by the applicable State Statute of Limitations is not subject to review by the Supreme Court of the United States, as it presents no substantial federal question. Preston v. Chicago, 226, U.S. 447, 33 S.Ct. 177, 57 L.Ed. 293 (1913)

Similarly, as the present action was dismissed on the basis of the application of the doctrine of res judicata, it is at once apparent from the pleadings submitted by Appellant herein from the procedural history of this action that this decision rests squarely on an independent non-federal basis sufficient to support the State Court's decision.

It has long been held by the United States Supreme Court that an action dismissed on the basis of the application

of the doctrine of res judicata will not be subject to review by the highest court of the land where the state court's decision rests upon independent ground not involving a federal question. Northern Pac. R.Co. v. Ellis 144 U.S. 458 12 S.Ct. 724, 36 L.Ed. 509 (1892)

A review of the decisions of the New Jersey state courts reveals that there was a substantial non-federal basis for upholding the decision to dismiss the within action both on the basis of the running of the Statute of Limitations and especially on the doctrine of res judicata.

CONCLUSION

For the foregoing reasons Appellee moves that this Appeal be dismissed.

MILLER & BELL
77 Market Street
Salem, New Jersey 08079
(609) 935-0912

BY Kenneth W. Miller, Jr.

KENNETH W. MILLER, JR.
A Member of the Firm
Attorney for Appellee

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NO. 80-1795

IN THE
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OCTOBER TERM 1980

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APPEAL FROM THE SUPRME COURT OF NEW JERSEY

BRIEF IN OPPOSITION TO MOTION TO DISMISS FILED BY PITTSGROVE TOWNSHIP

C. NEWELL ATKINSON
711 Broad Street
Northfield, N. J. 08225
Appellant pro se
Tel. (609) 645-2802

BRIEF OPPOSING MOTION TO DISMISS FILED
BY PITTSGROVE TOWNSHIP

It was Pittsgrove Township Solicitor Orvyl Schalick who in 1950 (now a retired Superior Court judge) decided appellant would not be notified of land assessment and the placing of it on the tax roll pursuant to the enactment of two laws; the IN REM TAX FORECLOSURE ACT (1948) and EXEMPT PROPERTY WHICH CEASES TO BE EXEMPT (1949). It was Pittsgrove Township officials Arthur Schalick, tax assessor (a brother of Orvyl Schalick) and Everett M. Hitchner, tax collector (both now deceased) who in 1958 executed a fraudulent Tax Sale Certificate charging appellant with delinquency in taxes in the amount of $85.34 when both individuals knew appellant personally and that he was a resident of Washington, D.C. This fraudulent Certificate was the basis in 1962 for the tax foreclosure judgment. It was the Pittsgrove Township Solicitor George Friedman who in 1962 prepared a

tax foreclosure complaint, inserting therein as an afterthought "owner unknown". Was this insertion of "owner unknown" added at the suggestion of Judge Frank Kingfield, the north Jersey Chancery judge (a judge not assigned to Salem County Chancery Div.) who entered the judgment in Trenton? Is it not possible that Judge Kingfield insisted that "owner unknown" be inserted to assure his signing of the judgment in Trenton might be justified? A judge from outside the jurisdiction disposing of land by tax foreclosure could certainly salve his conscience if he knew, or had been falsely led to believe by Township officials, that the owner was unknown. Judge Joseph Narrow in Salem had all this information which appellant has been forced to dig up bit by bit when he dismissed appellant's tort action on the basis of a 6-year statute of limitations thus denying the right of a jury trial. This dismissal of tort action has been the basis for dismissal of two succeeding cases -

Atkinson vs. Pittsgrove Township et al.,
Docket No. 77-0562
A U.S. District Court suit challenging the notice provisions of the In Rem Tax Foreclosure Act as unconstitutional.

The instant case - IN THE MATTER OF 18.86 ACRES OF REAL PROPERTY ETC.
A Chancery Div. suit to declare the tax foreclosure judgment null and void.

It is the present Township Solicitor Duane R. Bell who is not defending this action in the U.S. Supreme Court, but a member of the firm, Kenneth W. Miller. Similarly, in 1976 charges of unethical conduct in the execution of the tax foreclosureproceeding were filed against George Friedman, Township Solicitor. Among other charges were the insertion of "owner unknown" and the publication of the 1962 tax foreclosure proceeding in the Salem Sunbeam instead of the Elmer Times, the official organ for Township matters and the locale of the property. Friedman resisted the charge by stating "the foreclosure proceeding was handled in my office by Norman Telsey (a member of the firm) who ordered the advertisement and he had no knowledge of the reason why the Salem Sunbeam was chosen." Action by a member of the firm was a shield for an

action which was his responsibility.

Appellant has filed an appeal with this Court which is his right under existing rules and Pittsgrove Township according to form, as in each of the three cases, has filed a motion to dismiss.

In the instant case Judge Philip Gruccio made no attempt to justify his ruling in dismissal under the doctrine of res judicata, except to state the same issues were before Judge Narrow therefore NJSA 2A: 14-1 six-year statute of limitations barred action. Judge Gruccio had before him the Hyland vs. Kirkman et al. case which held, when fraud is alleged, the statute begins to run when the fraud is discovered. What more did he need? He intended, and did grant dismissal regardless of existing law, which the Appellate Court and the New Jersey Supreme Court affirmed.

Pittsgrove Township now makes motion to dismiss on the ground (1) that this appeal does not present a substantial federal question; and (2) that the judgment of the Supreme Court of New Jersey rests on an adequate nonfederal basis.

Appellant has requested the U.S. Supreme Court to grant his right to due process guaranteed by the U. S. Constitution, and denied by New Jersey's enactment of two unconstitutional laws, the In REM TAX FORECLOSURE ACT (1948) and EXEMPT PROPERTY WHICH CEASES TO BE EXEMPT (1949); and a declaration by the Court that these laws are unconstitutional as denying a property owner's rights. These are substantial federal questions.

As to the judgment of the N. J. Supreme Court it failed to grant petition for certification, thereby evading any responsibility of properly deciding the case, and rested its decision on the previously noted unconstitutional enactments. For the U. S. Supreme Court to examine these laws as unconstitutional is clearly a federal prerogative, and requested by appellant in the Jurisdictional Statement.

The question before the Court is not whether the tort action barred by the statute of limitations presents a substantial federal question; or whether the six-year or twenty-

year statute should have applied -- but the greater question is appellant's right to due process in a fraudulent situation guaranteed by the U. S. Constitution which has been denied him by the New Jersey courts.

Two ancient cases have been cited, 1913 and 1892, as authority that appellant's appeal be dismissed. Without doubt the tenor of the Court's decisions has changed considerably in the meantime.

The ruling of res judicata in the instant case is purely an excuse for dismissal. The rulings throughout by Judge Narrow in Salem Superior Court, Law Div.; Judge John F. Gerry in U. S. District Court and by Judge Philip Gruccio in Chancery Div., have been based on the six-year statute of limitations dating from the 1962 foreclosure judgment which appellant knew nothing about. Pittsgrove Township has determined from the outset that the allegations of fraud would never be considered by any court, and yet the existing documents need no further corroboration.

The res, i.e. the nullifcation of the

tax foreclosure judgment has never been adjudicated in any case or court -- the parties to the fraudulent transaction were included in the tort action, but not in the instant case although the tax assessor was living at the time of filing; and the forums differed from Superior Court, Law Div., to Superior Court, Chancery Div.

Preston v. Chicago 33 S. Ct. 177(1913)

This case holds that the claims of a policeman who has been dropped from the pay rolls, that he was an officer of the classified service, and could not be summarily removed from office, without denying him due process of law, was not well founded, because, upon a proper construction of the state statutes, the officer was not in the classified service, and was therefore subject to removal, presents no Federal question which will sustain a writ of error from the Federal Supreme Court. (Underscoring added).

The state statutes in this case were not questioned as unconstitutional as in appellant's case and bears no relevance to the present appeal.

Northern Pac. R. Co. v. Ellis 12 S. Ct. 724 (1892)

This is a Wisconsin case to quiet title to land claimed under a deed from a county, given as an inducement for the location of a railroad. The trial court refused to receive

in evidence the record of a suit in the U.S. circuit court, commenced subsequently to the one in the state court, in which the identical question was involved. The state court held this proper on the ground that its decision as to the title of land was res judicata. Held, that a writ of error to the state supreme court would be dismissed, the judgment resting on a ground not involving a federal question. (Underscoring added)

These cases were purely state matters not involving the right to due process guaranteed by the U. S. Constitution and therefore non-federal.

77 Corpus Juris Secundum p. 274 and 275

Res judicata is used with different meanings in connection with different conditions, and not always with discrimination. "Res judicata" literally means a thing judicially acted on or decided; a thing or matter settled by judicial decision; a thing or matter which has been definitely and finally settled and determined on its merits by the decision of a court of competent jurisdiction. (Underscoring added)

Since Judge Joseph Narrow's letter-order (Appendix A1) has been the sole decision in this matter, by the granting of a motion for summary judgment filed by the Township, and and later adoted by a federal judge in a suit challenging the notice provisions of the In Rem Act as being unconstitutional in the Camden

U. S. District Court; and again cited by the Chancery judge in the instant case (Appendix A9) it is respectfully requested that this court examine these rulings carefully as to the doctrine of res judicata as being just.

CONCLUSION

It is respectfully requested that the motion to dismiss be denied; or action postponed until a hearing on the merits.

Respectfully submitted,

C. Newell Atkinson

Appellant pro se

CERTIFICATE OF SERVICE

C. Newell Atkinson, Appellant pro se, hereby certifies that on July 15, 1981 two copies of this brief in opposition to motion to dismiss were mailed first-class postage prepaid to Duane R. Bell, Esq., Pittsgrove Township Solicitor, 77 Market Street, Salem, N. J.

C. Newell Atkinson

Sworn before me
this 13th day of July 1981

Joyce A Sawle

JOYCE A. SAWLE
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires AUG. 30 1984